

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Consider the Line
Extension Rules of Electric and Gas Utilities.

Rulemaking 92-03-050
(Filed March 31, 1992)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants The Utility Reform Network and Utility Consumers Action Network (jointly referred to as TURN) an award of \$66,962.22 in compensation for its substantial contribution to Decision (D.) 03-03-032. In that decision, the Commission addressed further proposed changes to the Line Extension Rules governing the extension of gas and electric service to new customers.

1. Background

In D.03-03-032, the Commission addressed three issues: (1) for applicant-installed projects, a proposal to provide trench inspections at ratepayer expense; (2) for utility-installed projects, an accounting change proposal that would charge or credit utility shareholders the difference between the utility's bid amount and the utility's finished cost; and (3) for applicant-installed projects, an accounting change proposal requiring the utility to book to ratebase the lower of the utility's bid amount or the applicant's cost.

The route to D.03-03-032 was not entirely straightforward. After two prehearing conferences in late 1999 and early 2000, the parties explored the possibility of settling the remaining issues in the proceeding. When those efforts

failed to reach fruition, the proceeding headed toward hearings, with discovery and preparation of testimony interrupted by the California wholesale electric market meltdown of late 2000 and early 2001. Testimony on the remaining issues was served in the summer of 2001, but hearings on that testimony were delayed until early 2002. Briefs were filed and served in spring of 2002, a proposed decision issued in the fall of that year and, after two alternate draft decisions were issued and commented on, the Commission issued D.03-03-032.

Consistent with the requirement of Pub. Util. Code § 1804(c), TURN filed this request for compensation within 60 days of the date of issuance of D.03-03-032. No party has opposed TURN's request for compensation.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. TURN filed a timely NOI in this proceeding.

Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding."

Section 1802(h) states that "substantial contribution" means that,

in the judgment of the commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the

customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to individuals with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

TURN's participation in this proceeding meets the Commission's criteria for determining whether an intervenor has made a substantial contribution to a Commission decision. TURN's testimony proposed two related changes to the then-existing line extension practices. First, TURN sponsored the proposal to record to rate base the lesser of the utility's bid or the actual costs for an applicant-installed job. (Testimony, July 16, 2001, pp. 3-4.) The Commission adopted this proposal in D.03-03-032, finding that it creates the potential for ratepayer savings if the actual cost is less than the utility estimate. (D.03-03-032, pp. 17-18; Conclusion of Law 4.) Second, with regard to inspection costs and fees, TURN proposed allowing inspection fees to become part of the job costs subject to allowances, so long as our proposal on the "lesser of bid or actuals" were adopted. (TURN/UCAN Testimony, July 16, 2001, pp. 4-5.) This represented a middle ground position between the utilities' request to assign all such costs directly to the applicant, and the builders' position that ratepayers should bear these costs in order to foster greater competition in the line extension market. (D.03-03-032, p. 4.) The Commission adopted TURN's proposal, recognizing that it allowed applicants to benefit from the revenue-based

allowances without causing ratepayers to face costs any greater than those that might ultimately result from a utility-installed project. (D.02-03-032, p. 8; Conclusion of Law 5.)

We find further that no reduction of compensation for duplication is warranted.

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3. The Commission directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The record developed in this proceeding does not include sufficient detail to allow calculation of the specific benefits from the Commission’s adoption of TURN’s recommendations. However, as the decision itself notes, adopting the accounting proposal put forward by TURN “creates a realistic opportunity for ratepayer savings.” (D.03-03-032, Finding of Fact 6.) Given that the accounting change will apply to each of the major energy utilities in the state, and that any reductions in rate base under that change (as compared to rate base levels that would have existed absent the change) will increase on a compounded basis in the years to come, the Commission may safely assume that the ratepayer savings will likely surpass the amount of compensation sought in this request. Thus, we find that TURN’s participation meets the productivity requirement.

4. Reasonableness of Requested Compensation

The following is a summary of TURN’s requested compensation.¹

¹ Consistent with TURN’s request, we deleted the amount included in this fee request for its contribution to Revenue Cycle Services (RCS), as those monies have been recovered through D.00-05-017 and D.03-06-065.

Attorney Fees

Robert Finkelstein	27.75	hours	X	\$365	=	\$10,128.75
	58.75	hours	X	\$340	=	\$19,975.00
	22.75	hours	X	\$310	=	\$ 7,052.50
	12.25	hours	X	\$280	=	\$ 3,430.00
	2.5	hours	X	\$265	=	\$ 662.50
	11.25	hours	X	\$182.50	=	\$ 2,053.12
Subtotal						= \$43,301.87

Expert Witness Costs—JBS Energy, Inc.

William Marcus	2.16	hours	X	\$150	=	\$ 324.00
	1.33	hours	X	\$175	=	\$ 232.75
Jeff Nahigian	68.25	hours	X	\$ 95	=	\$ 6,483.75
	13.0	hours	X	\$100	=	\$ 1,300.00
	118.25	hours	X	\$115	=	\$13,598.75
Expenses					=	\$ 245.00
Subtotal						= \$22,184.25

Other Reasonable Costs

Photocopying expense					=	\$ 1,189.40
Postage costs					=	\$ 171.87
Facsimile/Phone					=	\$ 24.00
Legal Research (LEXIS)					=	\$ 90.83
Subtotal						= \$ 1,476.10

D.03-03-032 TOTAL = \$66,962.22

4.1 Hours Claimed

TURN has presented its attorney, advocate and consultant hourly records in an appendix to the request for compensation. The information reflects the hours devoted to reviewing the records, drafting briefs and responses, and participating in hearings and other proceedings. TURN allocated its attorney time by issue in accordance with the guidelines adopted in D.85-08-012.

Consistent with Commission policy, TURN billed half of its attorney rate for time related to preparation of this compensation request and for out-of-town travel time. The hours TURN claims are reasonable.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.”

TURN requests an hourly rate of \$340 for work Finkelstein performed in 2002, \$310 for work he performed in 2001, \$285 for 2000, and \$265 for 1999. Each of these rates is the same rate previously approved by the Commission for his work in each of those years. These previous awards serve to establish the appropriate hourly rate for Finkelstein’s work in 1999-2002 in this proceeding.

TURN notes that this is the first Request for Compensation in which TURN seeks an hourly rate for substantive work performed by Finkelstein in 2003.² TURN requests an hourly rate of \$365 for such work, reflecting an increase of \$25 per hour (7.3%) over the \$340 base rate approved for his work in 2002.

Finkelstein is a 1985 graduate of Northeastern University School of Law, and is a member of the California bar in consumer law and government benefit programs, and he has significant experience with class actions.

In March of 1992 Finkelstein joined TURN’s staff and was assigned full responsibility for the organization’s work on electric utility issues shortly

² In D.03-05-027 and D.03-06-010, at TURN’s request, we compensated Finkelstein at the 2002 hourly rate of \$340 for a small number of hours worked in 2003 for supervising a fee request.

thereafter. Since then, Finkelstein has become a familiar presence before the Commission, actively participating in numerous major proceedings. According to TURN, his responsibility for electric utility issues extends beyond simple advocacy of an existing position, and includes involvement in the process of considering the ever-changing circumstances facing the electric industry and developing the appropriate response. Finkelstein also shares primary responsibility for developing and presenting TURN's positions in electric regulatory matters of a more general nature. In recent years Finkelstein has served in the role of supervising attorney for TURN, and as such is responsible for supervising the work of the less experienced attorneys on TURN's staff. He has also assumed primary responsibility for TURN's presentation in the New Regulatory Framework proceeding, and has assumed a more active role in TURN's telecommunications work as well as its energy work.

Pub. Util. Code § 1806 directs the Commission to consider "the market rates paid to persons of comparable training and experience who offer similar services" when computing a compensation award. TURN submits that the requested hourly rates would reflect a very conservative (that is, low) market rate for attorneys with similar training, experience and skill as TURN's attorneys bring to Commission proceedings. As evidence of the appropriate hourly rate, TURN relies on the survey of billing rates that it has presented to the Commission in past requests for compensation. In addition, TURN notes the market rates paid by the utilities for regulatory counsel in today's legal market.

We agree that given the credentials of Finkelstein, his record of demonstrated excellence before the Commission, and the evidence of the market rates paid to persons of similar credentials, an hourly rate of \$365 for his work in 2003 is reasonable.

Also, TURN seeks to recover \$29,528.46 in costs billed to it by JBS Energy, Inc., (JBS Energy) the consulting firm that provided the expert witness services that enabled it to participate in this proceeding. TURN asserts that the total sought for JBS Energy expert witness expenses represents a reasonable hourly rate applied for the work performed by various members of that firm, plus a small amount for expenses incurred in attending meetings associated with this application.

Jeff Nahigian, Senior Economist for JBS Energy, bore primary responsibility for the development and presentation of TURN's testimony in this proceeding, and assisted with preparation of the briefs on the issues covered in his testimony. With his extensive experience on line extension matters and the associated ratemaking issues, Nahigian bore primary and near sole responsibility for JBS Energy's work on behalf of TURN, which resulted in a smaller number of hours billed for the work of William Marcus, the firm's Principal Economist and Nahigian's supervisor.

The hourly rates requested for TURN's expert witnesses reflect the actual "recorded or billed costs" that TURN incurred in retaining their services (§ 1802(c)). The billing rates requested for each firm member are consistent with JBS Energy's standard billing rates during the period when the work was performed. The 1999-2000 rate of \$150 for Marcus has been approved and applied in a number of previous Commission decisions, including D.00-05-006, pp. 13-14 (Edison PBR Mid-Term Review, A.99-03-020). The 2001-2002 rate of \$175 for Marcus was approved and applied in D.02-11-020 (pp. 7-8) and D.03-04-011 (in A.00-11-038). Nahigian's hourly rate for 1999-2000 was also approved in D.00-05-006 (pp. 15-16). The hourly rate of \$100 for work in 2000-2001 was approved in D.01-10-008 (in Rulemaking (R.) 00-10-002), while the hourly rate of \$115 for work in 2001-2002 was approved in D.02-11-017 (also in

R.00-10-002). The JBS Energy expenses were for travel and accommodations associated exclusively with their activities in this proceeding, such as attending workshops and hearings.

We agree that the Commission should award the full amount of costs incurred for the work of JBS Energy. The Commission has long recognized the value that JBS Energy brings to these proceedings, especially in light of the high quality of the firm's work provided on behalf of the smaller customers of the investor-owned utilities. Therefore, we find that the rates charged by JBS Energy are reasonable.

We also find that TURN's miscellaneous costs of \$1,476.10 are reasonable and should be fully compensated.

5. Award

We award TURN \$66,962.22 for its contribution to D.03-03-032. Consistent with previous Commission decisions, we will order that, after August 2, 2003 (the 75th day after TURN filed its compensation request), interest be paid on TURN's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until the utilities make full payment.

We remind TURN and JBS Energy that Commission staff may audit their records related to this award. Thus, they must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

6. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN timely requests compensation for its contribution to D.03-03-032.
2. TURN requests hourly rates for its attorneys, consultants, and staff that have either been approved earlier by the Commission or that now are found to be reasonable based on a comparison to market rates for individuals of similar experience and qualifications.
3. For Robert Finkelstein, an hourly rate of \$365 for work done in 2003 is reasonable.
4. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$66,962.22 in compensation for its substantial contribution to D.03-03-032.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network and Utility Consumers Action Network is awarded \$66,962.22 as set forth herein for its substantial contribution to Decision (D.) 03-03-032.

2. The award shall be paid pursuant to Pub. Util. Code § 1807 by Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company in accordance with their respective 2002 California jurisdictional revenues. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, H.15, with interest beginning on August 2, 2003, and continuing until the full payment has been made.

3. This proceeding remains open to address an application for rehearing of D.03-03-032 filed by Utility Services Group.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	D
Contribution Decision:	D0303032
Proceeding:	R9203050
Author:	ALJ Patrick
Payers:	Pacific Gas and Electric Company San Diego Gas & Electric Company Southern California Edison Company Southern California Gas Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
The Utility Reform Network	5/19/2003	\$66,962.22	\$66,962.22	—

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Finkelstein	Attorney	The Utility Reform Network	\$265	1999	\$265
Robert	Finkelstein	Attorney	The Utility Reform Network	\$285	2000	\$285
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365	2003	\$365
William	Marcus	Economist	The Utility Reform Network	\$150	1999-2000	\$150
William	Marcus	Economist	The Utility Reform Network	\$175	2001-2002	\$175
Jeff	Nahigian	Economist	The Utility Reform Network	\$100	2000-2001	\$100
Jeff	Nahigian	Economist	The Utility Reform Network	\$115	2001-2002	\$115